

01-21-04
image

\$77
2876

Walker & Jocke

a legal professional association

Ralph E. Jocke
Patent
&
Trademark Law

January 20, 2004

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Re: **Application Serial No.:** 09/966,932
Appellant: Jay Paul Drummond, et al.
Filing Date: September 27, 2001
Confirmation No.: 5057
Title: AUTOMATED BANKING MACHINE
SYSTEM AND METHOD
Docket No.: D-1147 R2

Sir:

Please find enclosed the Brief of Appellant pursuant to 37 C.F.R. § 1.192 in triplicate for filing in the above-referenced application.

Please charge the fee required with this filing (\$330) and any other fee due to Deposit Account 09-0428 of InterBold.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 20th day of January 2004.

EV 382319919 US
Express Mail Label No.

Ralph E. Jocke

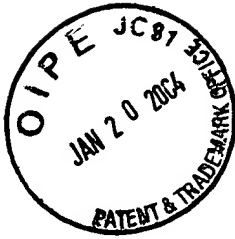
330 • 721 • 0000
MEDINA

330 • 225 • 1669
CLEVELAND

330 • 722 • 6446
FACSIMILE

rej@walkerandjocke.com
E-MAIL

231 South Broadway, Medina, Ohio U.S.A. 44256-2601



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)	
Jay Paul Drummond, et al.)	
)	Art Unit 2876
Serial No.: 09/966,932)	
)	
Confirm. No.: 5057)	
)	
Filed: September 27, 2001)	Patent Examiner
)	Kimberly D. Nguyen
For: AUTOMATED BANKING)	
MACHINE SYSTEM AND)	
METHOD)	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

BRIEF OF APPELLANTS
PURSUANT TO 37 C.F.R. § 1.192

Sir:

The Appellants hereby submit their Appeal Brief pursuant to 37 C.F.R. § 1.192, in triplicate, concerning the above-referenced Application.

REAL PARTY IN INTEREST

Diebold, Incorporated, an Ohio corporation having its principal location at 5995 Mayfair Road, North Canton, Ohio 44720 is the Assignee of all right and title to the claimed invention.

RELATED APPEALS AND INTERFERENCES

Appellants believe that there are no related appeals or interferences pertaining to this matter.

STATUS OF CLAIMS

Claims 1-35 are pending in the Application.

Claims 1-2, 4-5, 8-9 and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gutman, et al. (U.S. Patent No. 5,221,838) (“Gutman”).

Claims 16-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Waller, et al. (U.S. Publication No. 2001/0051922) (“Waller”).

Claims 3, 6-7, 10-14, and 28-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gutman in view of Waller.

Claims 18-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman.

Claims 23-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller.

Appellants respectfully traverse these rejections. These rejections were the only rejections present in the Office Action (“Action”) dated August 25, 2003, which was made Final.

Appellants appeal each claim rejection, inclusive.

Additional Comment

Claim 22 does not stand formally rejected. No rejection heading includes claim 22. However, the Office Action cover sheet indicates that claims 1-35 are rejected. The Action (on page 7) also refers to claim 22 in the body of the Waller/Gutman rejection. Thus, the status of claim 22 (allowed or rejected) is unclear. It follows that the Action is unclear.

In order to advance prosecution and prevent unnecessary prosecution delay by the Office, claim 22 has been presumed to be rejected pursuant 35 U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman. The Appellants reserve all rights to amend their arguments, including the filing of a Supplemental Appeal Brief, if their presumption, required by the unclear Action, is incorrect.

STATUS OF AMENDMENTS

A final rejection was made August 25, 2003. No amendments to the claims were requested to be admitted after the final rejection.

SUMMARY OF INVENTION

An exemplary form of the invention is directed to an apparatus and method. The apparatus comprises an automated banking machine (122) including a computer (Figure 5). The apparatus further includes at least one transaction function device (132) such as a cash dispenser in the automated banking machine, that is in operative connection with the computer. In addition, the apparatus may comprise a wireless access hub (124) in operative connection with the computer. The wireless access hub enables the automated banking machine to communicate

with a plurality of portable wireless devices (136, 138, 140). The computer is operative to enable the plurality of portable wireless devices to carry out a plurality of transactions with the automated banking machine. When at least two of the portable wireless devices initiate transactions that require the operation of one transaction function device of the banking machine, the computer is operative to cause outputs to be generated from at least one output device to sequentially prompt users of the at least two portable wireless devices initiating the transactions to move adjacent the one transaction function device of the machine; for example, to receive dispensed cash the value of which has been assessed to the account of the particular user.

CONCISE STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented in this appeal are:

- 1) Whether Gutman teaches every limitation and relationship recited in pending claims 1-2, 4-5, 8-9 and 15 so as to anticipate these claims pursuant to 35 U.S.C. § 102(b);
- 2) Whether Waller teaches every limitation and relationship recited in pending claims 16-17 so as to anticipate these claims pursuant to 35 U.S.C. § 102(e);
- 3) Whether Gutman in view of Waller teaches or suggests every limitation and relationship in claims 3, 6-7, 10-14, and 28-35 so as to render these claims obvious pursuant to 35 U.S.C. §103(a);
- 4) Whether Waller in view of Gutman teaches or suggests every limitation and relationship in claims 18-22 so as to render these claims obvious pursuant to 35 U.S.C. §103(a); and

- 5) Whether Waller teaches or suggests every limitation and relationship in claims 23-27 so as to render these claims obvious pursuant to 35 U.S.C. §103(a).

GROUPING OF CLAIMS

No groups of claims stand or fall together. Every claim recites additional features of the invention which distinguishes the claim over every other pending claim.

Each of Appellants' claims recites at least one element or combination of elements not found or suggested in the applied references, which patentably distinguishes the claims.

The pending claims include five independent claims (claims 1, 16, 23, 28 and 34). Claims 2-15 depend from claim 1. Claims 17-22 depend from claim 16. Claims 24-27 depend from claim 23. Claims 29-33 depend from claim 28. Claim 35 depends from claim 34. All pending claims 1-35 are reproduced in the Appendix.

ARGUMENT

The Applicable Legal Standards

Anticipation pursuant to 35 U.S.C. § 102 requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102 requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Barient, Inc.*, 822 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Anticipation by inherency requires that the Patent Office establish that persons skilled in the art would recognize that the missing element is necessarily present in the reference. To establish inherency the Office must prove through citation to prior art that the feature alleged to be inherent is "necessarily present" in a cited reference. Inherency may not be established based on probabilities or possibilities. It is plainly improper to reject a claim on the basis of 35 U.S.C. § 102 based merely on the possibility that a particular prior art disclosure could or might be used or operated in the manner recited in the claim. *In re Robertson*, 169 F.3d 743, 49 U.S.P.Q. 2d 1949 (Fed. Cir. 1999).

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie* obviousness. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. If the Office does not produce a *prima facie* case, then the Appellants are under no obligation to submit evidence of nonobviousness. MPEP § 2142.

The teaching, suggestion, or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Even if all of the features recited in the claim are known in the prior art, it is still not proper to reject a claim on the basis of obviousness unless there is a specific teaching, suggestion, or motivation in the prior art to produce the claimed combination. *Panduit Corp. v. Denison Mfg.*

Co., 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The evidence of record must teach or suggest the recited features. An assertion of basic knowledge and common sense not based on any evidence in the record lacks substantial evidence support. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001).

A determination of patentability must be based on evidence of record. *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

It is respectfully submitted that the Action from which this appeal is taken does not meet these burdens.

The Gutman Reference

Gutman is directed to an electronic wallet (100) which is capable of wireless or wired communication with a central financial institution computer (Column 8, lines 59-60). An example of a transaction that may be performed with the electronic wallet includes a "cash transaction." A cash transaction as defined in Gutman corresponds to the electronic wallet 502 (Figure 5A) communicating with a financial institution 500 to modify an amount in an account balance such as by transferring money from one account to another account or initiating a transaction to transfer money from a borrowing account balance to a cash account balance (Column 13, lines 10-18; Column 14, lines 34-37). The only place Gutman mentions Automated Teller Machines (ATMs) is in the Background Of The Invention section of the patent (Column 1, lines 31, 47, 49). Here Gutman refers to ATMs as dedicated terminal devices connected to a central financial computer. Gutman does not disclose or suggest that central financial computers are ATMs or automated banking machines. Although Gutman discloses

communication between a financial institution and an electronic wallet, nowhere in Gutman is it disclosed or suggested that the electronic wallet communicate with an automated banking machine such as an ATM.

The Waller Reference

Waller is a U.S. Patent Application Publication directed to a self-service terminal (10). In an embodiment of Waller, a user is able to execute a transaction using a portable communication device (24). Waller was filed as U.S. Application Serial No. 09/780,696 filed on February 9, 2001 and was published on December 13, 2001. Appellants application is entitled to (and claims the benefit of) the October 4, 2000 filing date of provisional application serial No. 60/237,812. The filing date for this provisional application is earlier than the February 9, 2001 U.S. filing date and the December 13, 2001 publication date of Waller. Thus Waller cannot constitute prior art with respect to the present invention pursuant to 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) . It follows that the rejections of claims 3, 6-7, 10-14, 16-35 based fully or in part on Waller are not valid and should be withdrawn.

(iii) 35 U.S.C. § 102

Pending Claims Are Not Anticipated by Gutman

In the Action claims 1, 2, 4, 5, 8, 9, and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gutman. These rejections are respectfully traversed.

Appellants respectfully disagree with the Action's interpretation of Gutman. As shown in more detail herein, Gutman does not teach each and every feature, relationship, and step of the

claimed invention arranged in the manner recited in the claims, as is required to sustain the rejections. It follows that Gutman cannot anticipate the claims. Thus, it is respectfully submitted that the 35 U.S.C. § 102(b) rejections should be withdrawn.

Claim 1

Claim 1 is an independent claim directed to a method. The method comprises: (a) receiving with an automated banking machine a wireless message representative of a request to establish a wireless connection with a portable wireless device; (b) establishing the wireless connection between the banking machine and the portable wireless device; (c) receiving through the wireless connection a second message from the portable wireless device representative of a request to perform a transaction with the banking machine; (d) authorizing the transaction through communication between the banking machine and a remote host system; (e) sending from the banking machine through the wireless connection to the portable wireless device an authorization confirmation message; (f) receiving through the wireless connection from the portable wireless device a commit transaction message; and (g) completing the authorized transaction through operation of the banking machine.

The Action alleges that Gutman teaches these steps. Appellants disagree. With respect to step (a) of claim 1, the Action states that Gutman teaches a method comprising “receiving with an automated banking machine a wireless message representative of a request to establish a wireless connection with a portable wireless device (100) (fig. 1; col 3, lines 46-68)”. By associating Gutman’s reference numeral (100) with the element of portable wireless device, it

appears that the Action regards Gutman's electronic wallet (100) as corresponding to the portable wireless device recited in claim 1.

Further, with respect to step (b) the Action asserts that Gutman teaches "establishing the wireless connection between the banking-machine/central-financial-computer and the portable wireless device 100 (fig. 1; col. 4, lines 35-54)". By use of the forward slash "/" between "banking-machine" and "central-financial-computer", the Action appears to assert that the central-financial-computer of Gutman corresponds to an automated banking machine as recited in claim 1. However, nowhere in Gutman is it disclosed or suggested that a central financial computer corresponds to an automated banking machine. In addition Gutman teaches away from having an automated banking machine serving as a central financial computer by teaching that an automated banking machine such as an ATM is a dedicated terminal device connected to a central financial computer (Column 1, lines 31-33). Thus, in view of Gutman, an automated banking machine is not a central financial computer but is a separate dedicated terminal device that connects to a central financial computer. It follows that Gutman does not disclose or suggest an automated banking machine receiving a wireless message from a portable wireless device, and Gutman does not disclose or suggest establishing a wireless connection between an automated banking machine and a portable wireless device.

Claim 1 specifically recites steps involving three different components: 1) an automated banking machine, 2) a portable wireless device; 3) and a remote host system. As discussed above, based on the assertions made in the Action, the Office appears to be arguing that the portable wireless device recited in claim 1 corresponds to the electronic wallet of Gutman and the automated banking machine recited in claim 1 corresponds to the central financial computer of

Gutman. However, with respect to the recited element of a remote host system in claim 1, the Action has not stated or even suggested which element of Gutman corresponds to a remote host system. On page 2 of the Action, the element of a remote host system is listed before the various cited portions in Gutman which are Figures 5C-5E; Column 7, line 41 through column 8, line 18; Column 9, lines 10-44; and Column 14, lines 17-67 of Gutman. These cited portions do not specifically mention a “remote host system”. Thus Appellants have been forced to speculate as to what the Action asserts is the "remote host system" in Gutman. Appellants have speculated that the Office may regard the third party (524) shown in Figures 5C-5E and discussed at Column 14, lines 17-67 of Gutman, as corresponding to a remote host system. The Appellants reserve all rights to amend their arguments, including the filing of a Supplemental Appeal Brief, if their speculation, required by the unclear Action, is incorrect.

Appellants respectfully submit even if it were possible for an electronic wallet, central financial computer, and third party of Gutman to correspond respectively to the portable wireless device, automated banking machine, and remote host system recited in claim 1 (which it is not), none of the examples in Gutman involving an electronic wallet, central financial computer, and third party disclose or suggest the specific steps recited in claim 1 involving a portable wireless device, an automated banking machine, and a remote host system.

For example, with respect to Figures 5C-5E, Gutman states that his electronic wallet (52) initiates a transaction with a financial institution (522) and a third party (524) by sending a message to the financial institution (522) via the third party (524) (Column 14, lines 17-21). The third party then handshakes the information with the financial institution (522) (Column 14, lines 52-54). The electronic wallet (520) then receives a confirmation message from the financial institution (522) (Column 14, lines 62-64). It is respectfully submitted that this communication

in Gutman between the electronic wallet, financial institution, and third party is the opposite of the communication recited in claim 1.

For example, step (c) of claim 1 recites receiving through the wireless connection between the automated banking machine and the portable wireless device, a second message from the portable wireless device. This message is representative of a request to perform a transaction with the automated banking machine. Step (d) then recites authorizing the transaction through communication between the banking machine and a remote host system.

In contrast, Gutman describes the opposite communication flow (Figures 5C - 5E), where the electronic wallet initiates a transaction via the third party (Column 14, lines 26-27). The Action appears to regard the third party as the "remote host system" rather than an automated banking machine. After initiation by the electronic wallet, the third party then handshakes the information with the financial institution (Column 14, lines 53-54). The Action asserts that the automated banking machine corresponds to the financial institution of Gutman. Based on the interpretation of Gutman alleged in the Action, Gutman's teachings are directly opposite to the method steps recited in claim 1.

Further, even if the Office reverses its argument by alleging that Gutman's third party corresponds to the recited automated banking machine and that Gutman's central financial institution computer corresponds to the remote host system, Appellants respectfully submit that Gutman would still not disclose or suggest the steps recited in claim 1. For example, where does Gutman disclose or suggest that the "third party" corresponds to an automated banking machine? Further, even if it were possible, which it is not, for the third party to correspond to an automated

banking machine, such an interpretation of Gutman would result in Gutman teaching the opposite flow of communication compared to step (e) of claim 1.

Step (e) of Appellants' claim 1 recites sending from the banking machine through the wireless connection to the portable wireless device, an authorization confirmation message. Gutman does not disclose or suggest that the third party send through a wireless connection to the electronic wallet, an authorization confirmation message. Rather Gutman teaches that the financial institution sends a confirmation message to the electronic wallet via the communication system (300) (Column 14, lines 62-64).

In addition, step (f) of Appellants' claim 1 recites receiving through the wireless connection from the portable wireless device, a commit transaction message. It is respectfully submitted that Gutman does not disclose or suggest a method including such a step. As discussed previously, Gutman discloses that the electronic wallet may receive a confirmation message from the financial institution; however, nowhere does Gutman disclose that the electronic wallet sends a commit transaction message through the wireless connection to either the central financial institution computer, a third party or any other device.

The Action asserts that Appellants' step (f) is shown in Figure 6A, item 612 of Gutman. However Gutman discloses that item 612 involves the confirmation message received by the electronic wallet (Column 17, lines 31-37) from the central financial institution computer, not a commit transaction sent by the electronic wallet to an automated banking machine.

The Appellants respectfully submit that Gutman does not teach every feature, relationship, and step arranged in the manner recited in claim 1, as is required to sustain the rejection. Thus, Appellants respectfully submit the 35 U.S.C. § 102(b) rejection of claim 1 is improper and should be withdrawn.

Claim 2

Claim 2 depends from claim 1. Gutman does not disclose or suggest a banking machine that receives an identification value or financial account data from a portable wireless device through a wireless connection. Further, Gutman does not disclose or suggest a banking machine that sends data corresponding to an identification value and a financial account received from such a portable wireless device, to a remote host system. It follows that Gutman does not anticipate claim 2.

Claim 4

Claim 4 depends from claim 2. Gutman does not disclose or suggest that at least one identification value received with a banking machine from a portable wireless device through a wireless connection, corresponds to a digital certificate. It follows that Gutman does not anticipate claim 4.

Claim 5

Claim 5 depends from claim 2. Gutman does not disclose or suggest that at least one identification value received by a banking machine through a wireless connection from a portable wireless device, corresponds to a PIN. It follows that Gutman does not anticipate claim 5.

Claim 8

Claim 8 depends from claim 1. Gutman does not disclose or suggest modifying data representative of monetary value in a data store of a portable wireless device responsive to at

least one message communicated with a banking machine through a wireless connection. It follows that Gutman does not anticipate claim 8.

Claim 9

Claim 9 depends from claim 1. Gutman does not disclose or suggest a wireless connection between an automated banking machine and a portable wireless device which comprises an RF connection. It follows that Gutman does not anticipate claim 9.

Claim 15

Claim 15 depends from claim 1 and further recites computer readable media bearing instructions which are operative to cause a computer in the automated banking machine to cause the machine to carry out the method steps recited in claim 1. As nothing in the applied art discloses or suggests such an article that operates in the manner recited, it is respectfully submitted that Gutman does not anticipate claim 15.

Pending Claims Are Not Anticipated by Waller

In the Action claims 16 and 17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Waller. These rejections are respectfully traversed.

As indicated previously, Waller is not prior art with respect to the present application. Nevertheless, even if it were somehow possible for Waller to constitute prior art, it still would not anticipate the claims. Appellants respectfully disagree with the Action's interpretation of Waller. As shown in more detail herein, Waller does not teach each and every feature, relationship, and step of the claimed invention arranged in the manner recited in the claims, as is

required to sustain the rejections. It follows that Waller cannot anticipate the claims. Thus, it is respectfully submitted that the 35 U.S.C. § 102(e) rejections should be withdrawn.

Claim 16

Claim 16 is an independent claim directed to an apparatus. The apparatus comprises: an automated banking machine including a computer; at least one transaction function device in the banking machine and in operative connection with the computer; and a wireless access hub in operative connection with the computer. The wireless hub enables the machine to communicate with a plurality of portable wireless devices, wherein the computer is operative to enable the plurality of portable wireless devices to initiate a plurality of transactions with the banking machine at about a same time.

Waller does not disclose or suggest each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the objection. For example, Waller does not disclose or suggest a computer of an automated banking machine that is operative to enable a plurality of portable wireless devices to initiate a plurality of transactions with the banking machine at about a same time. Hence, Appellants' claim 16 patentably distinguishes over the Waller reference. Thus, Appellants respectfully submit the 35 U.S.C. § 102(e) rejection of claim 16 is improper and should be withdrawn.

Claim 17

Claim 17 depends from claim 16 and further recites that at least one transaction function device in the banking machine includes a cash dispenser. As nothing in the applied art discloses

or suggests these features in the manner recited, it is respectfully submitted that Waller does not anticipate claim 17.

(iv) 35 U.S.C. § 103

Appellants traverse the rejections. The Appellants respectfully submit that the attempts to combine the teachings of the references are clearly attempts at hindsight reconstruction of Appellants' claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, 22 USPQ2d 1780 (Fed. Cir. 1992). The rejections, which lack the necessary evidence and rationale, are based on knowledge gleaned only from Appellants' disclosure. There is no teaching, suggestion, or motivation cited so as to produce Appellants' invention. Furthermore, without a motivation to combine, which is the current situation, a rejection based on a *prima facie* case of obviousness is improper (MPEP § 2143.01). The Office does not factually support any *prima facie* conclusion of obviousness. It would not have been obvious to one having ordinary skill in the art to have modified the references in the manner alleged to have produced the recited invention. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections are improper and should be withdrawn.

The Pending Claims Are Not Obvious Over Waller alone

In the Action claims 23-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller alone. These rejections are respectfully traversed. The Appellants respectfully disagree with the Office's interpretation and application of the references.

Also, as previously discussed, Waller does not constitute prior art. Appellants "may overcome a 35 U.S.C. § 103 rejection based on a combination of references by showing completion of the invention by applicant prior to the effective date of any of the references" (MPEP § 715.02). As 35 U.S.C. § 103(a) rejections of claims 23-27 involve Waller, these rejections are not valid.

Furthermore, even if it were somehow possible for Waller to constitute prior art, Appellants respectfully submit that the Action still would not factually support any *prima facie* conclusion of obviousness. Waller does not disclose or suggest the features, relationships, and steps that are specifically recited in the claims. Nor is there any teaching, suggestion, or motivation cited for modifying Waller so as to produce the claimed invention. It would not have been obvious to one having ordinary skill in the art to have modified Waller to have produced the claimed invention.

For these reasons it is respectfully submitted that the 35 U.S.C. § 103 rejections of claims 23-27 should be withdrawn.

Claim 23

Claim 23 is an independent claim which is directed to a method. Step (d) of claim 1 recites "receiving with the portable wireless device through the wireless connection a third message from the banking machine representative of a request to have a user move adjacent the machine".

The Action admits that Waller does not specifically teach a message from the banking machine to request the user to move adjacent to the machine. Also, the Action has failed to show either in Waller or in any other evidence of record, where such a message to request a user to

move adjacent to a banking machine is found in the prior art. As the Action has not shown that the applied art teaches each and every feature, relationship, and step of the claimed invention arranged in the manner recited in claim 23, the Action has failed to support a *prima facie* conclusion of obviousness.

Waller teaches that when a user wishes to withdraw cash from the ATM, the user approaches the ATM and executes the transaction program (Paragraphs 63 and 68). Waller also teaches conveying a message to the user's cell phone 126 advising the user that his/her cash is about to be dispensed. The Action asserts that it would be obvious to modify this message to prompt the user to approach/move-adjacent to the banking-machine-ATM. The Action also asserts that such a modification would have been an obvious expedient. However, in addition to not providing evidence of such a message in the applied art, the Action has failed to provide a motivation, teaching, or suggestion to modify Waller to include such a message. As disclosed in Waller, a user will have previously approached the machine before the transaction is executed. As the user (70) will already be standing next to the machine (14a) (Figure 5) when the cash is dispensed, there is no motivation to modify the messages of Waller to request that the user move adjacent the machine.

Thus, Waller does not disclose or suggest each and every feature, relationship, and step of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness. Further, Appellants respectfully submit that it would not have been obvious to one having ordinary skill in the art to have modified Waller as alleged to have produced the recited method of claim 23.

Claim 24

Claim 24 depends from claim 23 and recites that prior to step (d) the method further comprises: (f) accepting input of a Personal Identification Number (PIN) through the portable wireless device; and (g) sending through the wireless connection to the banking machine data corresponding to the PIN and at least one financing account number. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 25

Claim 25 depends from claim 23. Waller does not disclose or suggest at least step (f) which includes outputting at least one message with the portable wireless device responsive to the third message prompting a user of the portable wireless device to approach the banking machine and provide at least one input operative to send the fourth message. Further Waller does not disclose or suggest that such a step (f) is performed between the recited steps (d) and (e). It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 26

Claim 26 depends from claim 23 and recites that the portable wireless device comprises a voice communication device. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 27

Claim 27 depends from claim 23 and recites computer readable media bearing instructions which are operative in a computer to cause the automated banking machine to carry out the method steps recited in claim 27. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

The Pending Claims Are Not Obvious Over Gutman in view of Waller

In the Action claims 3, 6-7, 10-14, 28-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gutman in view of Waller. These rejections are respectfully traversed. The Appellants respectfully disagree with the Office's interpretation and application of the references.

Also, as previously discussed, Waller does not constitute prior art. Therefore, the rejections involving the Waller reference are not valid. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections of claims 3, 6-7, 10-14, and 28-35 are not valid.

Furthermore, even if it were somehow possible for Waller to constitute prior art, Appellants respectfully submit that the Action still would not factually support any *prima facie* conclusion of obviousness. Gutman in view of Waller does not disclose or suggest the features, relationships, and steps that are specifically recited in the claims. Nor is there any teaching, suggestion, or motivation cited for combining features of these references so as to produce the claimed invention. It would not have been obvious to one having ordinary skill in the art to have modified Gutman and Waller to have produced the claimed invention. For these reasons it is

respectfully submitted that the 35 U.S.C. § 103 rejections of 3, 6-7, 10-14, and 28-35 should be withdrawn.

Claim 3

Claim 3 depends from claim 2 and recites that at least one identification value corresponds to at least one biometric input. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 6

Claim 6 depends from claim 1 and recites that step (g) includes dispensing cash from the banking machine. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 7

Claim 7 depends from claim 1 and recites that the portable wireless device comprises a voice communication device. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 10

Claim 10 depends from claim 6. Neither Gutman nor Waller discloses or suggests that prior to step (g), the method further comprises prompting a user of the portable wireless device to move adjacent to the banking machine. In addition as discussed previously with respect to claim 23, Waller discloses that a user will have previously approached the machine before a transaction is executed (Paragraphs 63 and 68). As a result the user (70) will already be standing next to the machine (14a) (Figure 5) when cash is dispensed. Thus, there is no motivation to modify the messages of Waller as asserted in the Action to request that the user move adjacent the machine.

Neither Gutman nor Waller discloses or suggests each and every feature, relationship, and step of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 11

Claim 11 depends from claim 10 and recites that the prompting step comprises sending at least one prompting message between the banking machine and the portable wireless device through the wireless connection. As discussed previously with respect to claim 23, the Action admits that Waller does not teach a message from the banking machine to request a user to move adjacent to the machine. Neither Gutman nor Waller discloses or suggests prompting a user of the portable wireless device to move adjacent to the banking machine, where a prompting message is sent between the banking machine and the portable wireless device through the wireless connection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 12

Claim 12 depends from claim 10 and recites that subsequent to the prompting step and prior to step (g), providing at least one operation input to the banking machine, wherein cash is dispensed responsive to the operation input. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 13

Claim 13 depends from claim 12 and recites that in step (f) the commit transaction message comprises the operation input. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 14

Claim 14 depends from claim 10. Neither Gutman nor Waller discloses or suggests the step of receiving with the banking machine a further wireless message from a further portable wireless device prior to dispensing cash in step (g). Further neither Gutman nor Waller disclose or suggest that the prompting step includes prompting the user of the portable wireless device and the further portable wireless device to sequentially move adjacent to the banking machine. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 28

Claim 28 is an independent claim which is directed to a method. The Action admits that the financial institution of Gutman does not correspond to an ATM machine, and that Gutman does not teach step (f) of dispensing cash from the ATM. However, the Action asserts that Waller teaches a wireless ATM comprising a cash dispenser for dispensing cash from the ATM. The Action also asserts that it would have been obvious to combine Gutman and Waller due to the fact that a user can also complete his/her transaction at the ATM machine without physically walking into a bank facility. Appellants disagree.

As discussed previously, Waller is not prior art. However, even if Waller were prior art, there is no motivation, teaching, or suggestion in Waller or Gutman to combine Waller and Gutman as suggested. Each of steps (a) through (d) recites an ATM. As admitted in the Action Gutman's does not disclose or suggest that Gutman's financial institution be replaced by an ATM. Thus in addition to not showing step (f) as admitted in the Action, it follows that Gutman also does not disclose steps (a) through (d) which recite an ATM and not a financial institution.

The Action argues that it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ a wireless ATM machine with cash dispensing functionality as taught by Waller, to the teachings of Gutman in addition to Gutman's transaction system. It is unclear from the Action how a wireless ATM can be employed in the transaction system of Gutman. Thus Appellants have been forced to speculate that to support the rejection of claim 28 on the basis of obviousness, that the Action is suggesting that it would be obvious to substitute Waller's cash dispensing ATM for Gutman's financial institution.

It is respectfully submitted that neither Gutman nor Waller provide a motivation, teaching, or suggestion to make such a substitution. Nowhere in Gutman is it disclosed or

suggested that a financial institution or a central financial computer of a financial institution corresponds to an automated banking machine. Gutman discloses an electronic wallet which wirelessly communicates with a central financial computer of a financial institution. Gutman does not disclose or suggest that its electronic wallet communicate with an automated banking machine such as an ATM. On this contrary, as previously discussed, Gutman expressly teaches that an ATM is not suitable for use with his electronic wallet. Thus neither Gutman nor Waller provides a motivation to substitute Waller's cash dispensing ATM for Gutman financial institution. As a result, the rejection of claim 28 is improper.

In addition, step (c) of claim 28 recites "authorizing the transaction through communication between the ATM and a remote host system." As recited in step (b) the transaction includes dispensing cash from the ATM. Step (d) of claim 28 recites that: "responsive to step (c) sending from the ATM through the wireless connection to the portable wireless device at least one second message that is operative to cause the portable wireless device to prompt a user of the portable wireless device to provide at least one input". Thus claim 28, specifically recites that step (d) is performed responsive to step (c).

The Action asserts that step (d) is shown in Gutman in Figure 6A-6D; Column 7, lines 64-68; and Column 16, line 39 through Column 17, line 38. Applicants disagree. Gutman discloses that a number of transactions may be initiated by the electronic wallet (100) and a subsequent confirmation message may be received by the electronic wallet (Column 17, lines 29-33). However, Gutman does not disclose or suggest that an ATM (or even the financial institution) performs a step (d) which includes sending a message through a wireless connection to a portable wireless device which causes the portable wireless device to prompt a user to

provide at least one input, responsive to a step (c) of authorizing a transaction with communication with a remote host system.

In addition, Gutman also does not disclose or suggest step (e) of claim 28 where an ATM receives a message generated in response to the at least one input which was prompted to be provided by the user in step (d). The Action appears to suggest that such an input in Gutman corresponds to “a password, type of transaction and/or details of the transaction etc.” However, nowhere does Gutman suggest that an input such as a password, type of transaction and/or details of the transaction is prompted for by a message sent to a portable electronic device in response to a step of authorizing a transaction through communication between an ATM and a remote host system.

Thus, the Action has failed to show that Gutman in view of Waller discloses or suggest each and every feature, relationship, and step of the claimed invention, as is required to sustain the rejection. The Office has not established a *prima facie* showing of obviousness.

Additionally, Appellants have shown that it would not have been obvious to modify Gutman with the teaching of Waller in the manner alleged. Furthermore, even if it were somehow possible for Gutman to be modified with the teaching of Waller as alleged, the result still would not have produced the recited invention of claim 28. In addition, Waller is not prior art. Thus, Appellants respectfully submit the rejection is improper and should be withdrawn.

Claim 29

Claim 29 depends from claim 28 and recites that prior to (e) the method comprises receiving the at least one input from the user with an input device of the portable wireless device. Claim 29 also recites that in (e) the at least one third message is received with the ATM through

the wireless connection from the portable wireless device. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 30

Claim 30 depends from claim 28. Neither Gutman nor Waller discloses or suggests prior to (e) receiving the at least one input from the user with an input device of the ATM. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 31

Claim 31 depends from claim 28. Neither Gutman nor Waller discloses or suggests as recited in (d) that the at least one second message is operative to cause the portable wireless device to prompt the user of the portable wireless device to move adjacent to the ATM. As discussed previously with respect to claim 23, Waller discloses that a user will have previously approached the machine before a transaction is executed (Paragraphs 63 and 68). As a result the user (70) will already be standing next to the machine (14a) (Figure 5) when cash is dispensed. Thus, there is no motivation to modify the messages of Waller as asserted in the Action to request that the user move adjacent the machine.

Neither Gutman nor Waller discloses or suggests each and every feature, relationship, and step of the claimed invention as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 32

Claim 32 depends from claim 28 and recites that in (d) the at least one second message is operative to cause the portable wireless device to indicate to the user that the input causes the ATM to dispense cash. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 33

Claim 33 depends from claim 28 and recites computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 28. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 34

Claim 34 is an independent claim which is directed to a method. In the section of the Response directed to the rejection of claim 34, the Action has provided no discussion of where the steps recited in claim 34 are allegedly found in either Gutman or Waller. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Neither Gutman nor Waller disclose or suggest step (a) of providing wireless connection between an ATM and at least two portable wireless devices such that the at least two portable wireless devices concurrently carry out cash dispensing transactions with the ATM through wireless connection with the ATM. In addition neither Gutman nor Waller disclose or suggest

performing the prompting steps (b) and (e) with the at least two portable wireless devices, where step (e) is performed subsequent to step (d) which includes dispensing cash to the first user of the first one of the at least two portable wireless.

Thus, Gutman in view of Waller does not disclose or suggest each and every feature, relationship, and step of the claimed invention, as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness. Further, Appellants respectfully submit that it would not have been obvious to one having ordinary skill in the art to have modified Gutman with the teachings of Waller as alleged to have produced the recited method of claim 34. In addition, Waller does not constitute prior art.

Claim 35

Claim 35 depends from claim 34 and recites computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 34. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

The Pending Claims Are Not Obvious Over Waller in view of Gutman

In the Action claims 18-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman. These rejections are respectfully traversed. The Appellants respectfully disagree with the Office's interpretation and application of the references.

Also, as discussed previously, for purposes of advancing prosecution of the case, Appellants have presumed that claim 22 was intended by the Office to be rejected under 35

U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman as well. This presumed rejection is also respectfully traversed.

Also, as previously discussed, Waller does not constitute prior art. Therefore, the rejections involving the Waller reference are not valid. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections of claims 18-22 are not valid.

Furthermore, even if it were somehow possible for Waller to constitute prior art, Appellants respectfully submit that the Action still would not factually support any *prima facie* conclusion of obviousness. Waller in view of Gutman does not disclose or suggest the features, relationships, and steps that are specifically recited in the claims. Nor is there any teaching, suggestion, or motivation cited for combining features of these references so as to produce the claimed invention. It would not have been obvious to one having ordinary skill in the art to have modified Waller and Gutman to have produced the claimed invention. For these reasons it is respectfully submitted that the 35 U.S.C. § 103 rejections of 18-22 should be withdrawn.

Claim 18

Claim 18 depends from claim 16. The Action admits that Waller does not teach that when at least two of the portable wireless devices initiate transactions that require the operation of one transaction function device, the computer is operative to cause outputs to be generated from at least one output device to sequentially prompt users of the at least two portable wireless devices initiating the transactions. It follows from this admission in the Action that Waller also does not disclose or suggest sequentially prompting users of the at least two portable wireless devices initiating the transactions to move adjacent the one transaction function device.

The Action asserts that Gutman discloses these features which are absent from Waller. Appellants disagree. However, nowhere does Gutman disclose or suggest sequentially prompting users of at least two portable wireless devices initiating the transactions to move adjacent one transaction function device. It is respectfully submitted that the Office has not established a *prima facie* showing of obviousness.

Claim 19

Claim 19 depends from claim 16. Neither Waller nor Gutman disclose or suggest, that when at least two of the plurality of transactions require the operation of one transaction function device, the computer is operative to cause a first wireless message to be sent to a first portable wireless device initiating one of the at least two transactions. Further neither Waller nor Gutman disclose or suggest that the first message is operative to cause the first portable wireless device to output a prompt message to instruct a user to move adjacent the one transaction function device. It is respectfully submitted that the Office has not established a *prima facie* showing of obviousness.

Claim 20

Claim 20 depends from claim 19 and recites that the computer is operative to cause the one transaction function device to operate responsive to receipt by the banking machine of a second wireless message from the first portable wireless device. The second message is representative of an input to the first portable wireless device indicative of a request to operate the one transaction function device. As nothing in the applied art discloses or suggests these

features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 21

Claim 21 depends from claim 19 and recites that the banking machine further comprises an identifying device in operative connection with the computer. The identifying device is operative to receive at least one input indicative of an identity of a user. The computer is operative to cause operation of the one transaction function device responsive to the at least one input corresponding to one of the at least two transactions. As nothing in the applied art discloses or suggests these features in the manner recited, it is respectfully submitted that claim 21 is allowable on this basis.

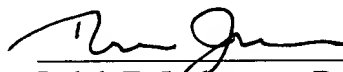
Claim 22

Claim 22 depends from claim 21 and recites that the identifying device includes a biometric reader. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

CONCLUSION

Each of Appellants' pending claims specifically recites features and relationships that are neither disclosed nor suggested in any of the applied prior art. Furthermore, the applied prior art is devoid of any teaching, suggestion, or motivation for combining features of the applied art so as to produce the recited invention. Further, all rejections based on Waller are improper because Waller does not constitute prior art. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,



Ralph E. Jocke Reg. No. 31,029
231 South Broadway
Medina, Ohio 44256
(330) 722-5143

APPENDIX OF CLAIMS

Pending Claims in Application Serial No. 09/966,932

1. A method comprising:
 - (a) receiving with an automated banking machine a wireless message representative of a request to establish a wireless connection with a portable wireless device;
 - (b) establishing the wireless connection between the banking machine and the portable wireless device;
 - (c) receiving through the wireless connection a second message from the portable wireless device representative of a request to perform a transaction with the banking machine;
 - (d) authorizing the transaction through communication between the banking machine and a remote host system;
 - (e) sending from the banking machine through the wireless connection to the portable wireless device an authorization confirmation message;

- (f) receiving through the wireless connection from the portable wireless device a commit transaction message; and
- (g) completing the authorized transaction through operation of the banking machine.

2. The method according to claim 1, and prior to step (d) further comprising:

receiving with the banking machine from the portable wireless device through the wireless connection at least one identification value and data corresponding to at least one financial account; and

wherein step (d) includes sending data corresponding to the at least one identification value and the at least one financial account to the remote host system.

3. The method according to claim 2 wherein the at least one identification value corresponds to at least one biometric input.

4. The method according to claim 2 wherein the at least one identification value corresponds to a digital certificate.

5. The method according to claim 2 wherein the at least one identification value corresponds to a PIN.
6. The method according to claim 1 wherein step (g) includes dispensing cash from the banking machine.
7. The method according to claim 1 wherein the portable wireless device comprises a voice communication device.
8. The method according to claim 1 wherein the portable wireless device comprises at least one data store including data representative of monetary value, and further comprising modifying the data representative of monetary value responsive to at least one message communicated with the banking machine through the wireless connection.
9. The method according to claim 1 wherein the wireless connection comprises an RF connection.
10. The method according to claim 6 and further comprising prior to step (g):

prompting a user of the portable wireless device to move adjacent to the banking machine.

11. The method according to claim 10 wherein the prompting step comprises sending at least one prompting message between the banking machine and the portable wireless device through the wireless connection.

12. The method according to claim 10 and subsequent to the prompting step and prior to step (g), providing at least one operation input to the banking machine, wherein cash is dispensed responsive to the operation input.

13. The method according to claim 12 wherein in step (f) the commit transaction message comprises the operation input.

14. The method according to claim 10 and further comprising:

receiving with the banking machine a further wireless message from a further portable wireless device prior to dispensing cash in step (g);

and wherein the prompting step includes prompting the user of the portable wireless device and the further portable wireless device to sequentially move adjacent to the banking machine.

15. Computer readable media bearing instructions which are operative to cause a computer in the automated banking machine to cause the machine to carry out the method steps recited in claim 1.

16. Apparatus comprising:

an automated banking machine including a computer;

at least one transaction function device in the banking machine and in operative connection with the computer; and

a wireless access hub in operative connection with the computer, where the wireless hub enables the machine to communicate with a plurality of portable wireless devices, wherein the computer is operative to enable the plurality of portable wireless devices to initiate a plurality of transactions with the banking machine at about a same time.

17. The apparatus according to claim 16, wherein at least one transaction function device in the banking machine includes a cash dispenser.

18. The apparatus according to claim 16, wherein when at least two of the portable wireless devices initiate transactions that require the operation of one transaction function device, the computer is operative to cause outputs to be generated from at least one output device to sequentially prompt users of the at least two portable wireless devices initiating the transactions to move adjacent the one transaction function device.

19. The apparatus according to claim 16, wherein when at least two of the plurality of transactions requires the operation of one transaction function device, the computer is operative to cause a first wireless message to be sent to a first portable wireless device initiating one of the at least two transactions, wherein the first message is operative to cause the first portable wireless device to output a prompt message to instruct a user to move adjacent the one transaction function device.

20. The apparatus according to claim 19, wherein the computer is operative to cause the one transaction function device to operate responsive to receipt by the banking machine of a second wireless message from the first portable wireless device, wherein the second message is representative of an input to the first portable wireless device indicative of a request to operate the one transaction function device.

21. The apparatus according to claim 19, wherein the banking machine further comprises an identifying device in operative connection with the computer, wherein the identifying device is operative to receive at least one input indicative of an identity of a user, wherein the computer is operative to cause operation of the one transaction function device responsive to the at least one input corresponding to one of the at least two transactions.

22. The automated banking machine according to claim 21, wherein the identifying device includes a biometric reader.

23. A method comprising:

- (a) sending with a portable wireless device a first message representative of a request to establish a wireless connection with an automated banking machine;
- (b) establishing the wireless connection between the portable wireless device and the banking machine;
- (c) sending through the wireless connection a second message from the portable wireless device to the banking machine representative of a request to perform a transaction with the banking machine;
- (d) receiving with the portable wireless device through the wireless connection a third message from the banking machine representative of a request to have a user move adjacent the machine; and
- (e) sending from the portable wireless device through the wireless connection a fourth message to the banking machine representative of a request for the machine to operate a transaction function device.

24. The method according to claim 23, and prior to step (d) further comprising:

- (f) accepting input of a Personal Identification Number (PIN) through the portable wireless device;

- (g) sending through the wireless connection to the banking machine data corresponding to the PIN and at least one financing account number.

25. The method according to claim 23, wherein between steps (d) and (e), further comprising:

- (f) outputting at least one message with the portable wireless device responsive to the third message prompting a user of the portable wireless device to approach the banking machine and provide at least one input operative to send the fourth message.

26. The method according to claim 23 wherein the portable wireless device comprises a voice communication device.

27. Computer readable media bearing instructions which are operative in a computer to cause the automated banking machine to carry out the method steps recited in claim 23.

28. A method comprising:

- (a) establishing a wireless connection between an ATM and a portable wireless device;

- (b) receiving with the ATM through the wireless connection at least one first message from the portable wireless device representative of a transaction that includes dispensing cash from the ATM;
- (c) authorizing the transaction through communication between the ATM and a remote host system;
- (d) responsive to step (c) sending from the ATM through the wireless connection to the portable wireless device at least one second message that is operative to cause the portable wireless device to prompt a user of the portable wireless device to provide at least one input;
- (e) receiving with the ATM at least one third message generated in response to the at least one input provided by the user; and
- (f) dispensing cash from the ATM responsive to the at least one third message.

29. The method according to claim 28, and prior to (e) receiving the at least one input from the user with an input device of the portable wireless device, wherein in (e) the at least one third message is received with the ATM through the wireless connection from the portable wireless device.

30. The method according to claim 28, and prior to (e) receiving the at least one input from the user with an input device of the ATM.

31. The method according to claim 28, wherein in (d) the at least one second message is operative to cause the portable wireless device to prompt the user of the portable wireless device to move adjacent to the ATM.

32. The method according to claim 28, wherein in (d) the at least one second message is operative to cause the portable wireless device to indicate to the user that the input causes the ATM to dispense cash.

33. Computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 28.

34. A method comprising:

- a) providing wireless connection between an ATM and at least two portable wireless devices wherein the at least two portable wireless devices concurrently carry out cash dispensing transactions with the ATM through wireless connection with the ATM;
- b) prompting a first user of a first one of the at least two portable wireless devices to provide at least one first input responsive to communication

between the first one of the at least two portable wireless devices and the ATM through wireless connection;

- c) receiving at least one input corresponding to the at least one first input with the ATM; and
- d) dispensing cash to the first user through operation of a cash dispenser of the ATM responsive to receipt of the at least one input in (c); and subsequent to (d);
- e) prompting a second user of a second one of the at least two portable wireless devices, to provide at least one second input responsive to communication between the second one of the at least two portable wireless devices and the ATM through wireless connection;
- f) receiving at least one input corresponding to the at least one second input with the ATM; and
- g) dispensing cash to the second user through operation of the cash dispenser of the ATM responsive to receipt of the at least one input in (f).

35. Computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 34.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)	
Jay Paul Drummond, et al.)	
)	Art Unit 2876
Serial No.: 09/966,932)	
)	
Confirm. No.: 5057)	
)	
Filed: September 27, 2001)	Patent Examiner
)	Kimberly D. Nguyen
For: AUTOMATED BANKING)	
MACHINE SYSTEM AND)	
METHOD)	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

BRIEF OF APPELLANTS
PURSUANT TO 37 C.F.R. § 1.192

Sir:

The Appellants hereby submit their Appeal Brief pursuant to 37 C.F.R. § 1.192, in triplicate, concerning the above-referenced Application.

REAL PARTY IN INTEREST

Diebold, Incorporated, an Ohio corporation having its principal location at 5995 Mayfair Road, North Canton, Ohio 44720 is the Assignee of all right and title to the claimed invention.

RELATED APPEALS AND INTERFERENCES

Appellants believe that there are no related appeals or interferences pertaining to this matter.

STATUS OF CLAIMS

Claims 1-35 are pending in the Application.

Claims 1-2, 4-5, 8-9 and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gutman, et al. (U.S. Patent No. 5,221,838) (“Gutman”).

Claims 16-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Waller, et al. (U.S. Publication No. 2001/0051922) (“Waller”).

Claims 3, 6-7, 10-14, and 28-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gutman in view of Waller.

Claims 18-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman.

Claims 23-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller.

Appellants respectfully traverse these rejections. These rejections were the only rejections present in the Office Action (“Action”) dated August 25, 2003, which was made Final. Appellants appeal each claim rejection, inclusive.

Additional Comment

Claim 22 does not stand formally rejected. No rejection heading includes claim 22. However, the Office Action cover sheet indicates that claims 1-35 are rejected. The Action (on page 7) also refers to claim 22 in the body of the Waller/Gutman rejection. Thus, the status of claim 22 (allowed or rejected) is unclear. It follows that the Action is unclear.

In order to advance prosecution and prevent unnecessary prosecution delay by the Office, claim 22 has been presumed to be rejected pursuant 35 U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman. The Appellants reserve all rights to amend their arguments, including the filing of a Supplemental Appeal Brief, if their presumption, required by the unclear Action, is incorrect.

STATUS OF AMENDMENTS

A final rejection was made August 25, 2003. No amendments to the claims were requested to be admitted after the final rejection.

SUMMARY OF INVENTION

An exemplary form of the invention is directed to an apparatus and method. The apparatus comprises an automated banking machine (122) including a computer (Figure 5). The apparatus further includes at least one transaction function device (132) such as a cash dispenser in the automated banking machine, that is in operative connection with the computer. In addition, the apparatus may comprise a wireless access hub (124) in operative connection with the computer. The wireless access hub enables the automated banking machine to communicate

with a plurality of portable wireless devices (136, 138, 140). The computer is operative to enable the plurality of portable wireless devices to carry out a plurality of transactions with the automated banking machine. When at least two of the portable wireless devices initiate transactions that require the operation of one transaction function device of the banking machine, the computer is operative to cause outputs to be generated from at least one output device to sequentially prompt users of the at least two portable wireless devices initiating the transactions to move adjacent the one transaction function device of the machine; for example, to receive dispensed cash the value of which has been assessed to the account of the particular user.

CONCISE STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented in this appeal are:

- 1) Whether Gutman teaches every limitation and relationship recited in pending claims 1-2, 4-5, 8-9 and 15 so as to anticipate these claims pursuant to 35 U.S.C. § 102(b);
- 2) Whether Waller teaches every limitation and relationship recited in pending claims 16-17 so as to anticipate these claims pursuant to 35 U.S.C. § 102(e);
- 3) Whether Gutman in view of Waller teaches or suggests every limitation and relationship in claims 3, 6-7, 10-14, and 28-35 so as to render these claims obvious pursuant to 35 U.S.C. §103(a);
- 4) Whether Waller in view of Gutman teaches or suggests every limitation and relationship in claims 18-22 so as to render these claims obvious pursuant to 35 U.S.C. §103(a); and

- 5) Whether Waller teaches or suggests every limitation and relationship in claims 23-27 so as to render these claims obvious pursuant to 35 U.S.C. §103(a).

GROUPING OF CLAIMS

No groups of claims stand or fall together. Every claim recites additional features of the invention which distinguishes the claim over every other pending claim.

Each of Appellants' claims recites at least one element or combination of elements not found or suggested in the applied references, which patentably distinguishes the claims.

The pending claims include five independent claims (claims 1, 16, 23, 28 and 34). Claims 2-15 depend from claim 1. Claims 17-22 depend from claim 16. Claims 24-27 depend from claim 23. Claims 29-33 depend from claim 28. Claim 35 depends from claim 34. All pending claims 1-35 are reproduced in the Appendix.

ARGUMENT

The Applicable Legal Standards

Anticipation pursuant to 35 U.S.C. § 102 requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102 requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Barient, Inc.*, 822 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Anticipation by inherency requires that the Patent Office establish that persons skilled in the art would recognize that the missing element is necessarily present in the reference. To establish inherency the Office must prove through citation to prior art that the feature alleged to be inherent is "necessarily present" in a cited reference. Inherency may not be established based on probabilities or possibilities. It is plainly improper to reject a claim on the basis of 35 U.S.C. § 102 based merely on the possibility that a particular prior art disclosure could or might be used or operated in the manner recited in the claim. *In re Robertson*, 169 F.3d 743, 49 U.S.P.Q. 2d 1949 (Fed. Cir. 1999).

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie* obviousness. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. If the Office does not produce a *prima facie* case, then the Appellants are under no obligation to submit evidence of nonobviousness. MPEP § 2142.

The teaching, suggestion, or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Even if all of the features recited in the claim are known in the prior art, it is still not proper to reject a claim on the basis of obviousness unless there is a specific teaching, suggestion, or motivation in the prior art to produce the claimed combination. *Panduit Corp. v. Denison Mfg.*

Co., 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The evidence of record must teach or suggest the recited features. An assertion of basic knowledge and common sense not based on any evidence in the record lacks substantial evidence support. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001).

A determination of patentability must be based on evidence of record. *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

It is respectfully submitted that the Action from which this appeal is taken does not meet these burdens.

The Gutman Reference

Gutman is directed to an electronic wallet (100) which is capable of wireless or wired communication with a central financial institution computer (Column 8, lines 59-60). An example of a transaction that may be performed with the electronic wallet includes a "cash transaction." A cash transaction as defined in Gutman corresponds to the electronic wallet 502 (Figure 5A) communicating with a financial institution 500 to modify an amount in an account balance such as by transferring money from one account to another account or initiating a transaction to transfer money from a borrowing account balance to a cash account balance (Column 13, lines 10-18; Column 14, lines 34-37). The only place Gutman mentions Automated Teller Machines (ATMs) is in the Background Of The Invention section of the patent (Column 1, lines 31, 47, 49). Here Gutman refers to ATMs as dedicated terminal devices connected to a central financial computer. Gutman does not disclose or suggest that central financial computers are ATMs or automated banking machines. Although Gutman discloses

communication between a financial institution and an electronic wallet, nowhere in Gutman is it disclosed or suggested that the electronic wallet communicate with an automated banking machine such as an ATM.

The Waller Reference

Waller is a U.S. Patent Application Publication directed to a self-service terminal (10). In an embodiment of Waller, a user is able to execute a transaction using a portable communication device (24). Waller was filed as U.S. Application Serial No. 09/780,696 filed on February 9, 2001 and was published on December 13, 2001. Appellants application is entitled to (and claims the benefit of) the October 4, 2000 filing date of provisional application serial No. 60/237,812. The filing date for this provisional application is earlier than the February 9, 2001 U.S. filing date and the December 13, 2001 publication date of Waller. Thus Waller cannot constitute prior art with respect to the present invention pursuant to 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) . It follows that the rejections of claims 3, 6-7, 10-14, 16-35 based fully or in part on Waller are not valid and should be withdrawn.

(iii) 35 U.S.C. § 102

Pending Claims Are Not Anticipated by Gutman

In the Action claims 1, 2, 4, 5, 8, 9, and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gutman. These rejections are respectfully traversed.

Appellants respectfully disagree with the Action's interpretation of Gutman. As shown in more detail herein, Gutman does not teach each and every feature, relationship, and step of the

claimed invention arranged in the manner recited in the claims, as is required to sustain the rejections. It follows that Gutman cannot anticipate the claims. Thus, it is respectfully submitted that the 35 U.S.C. § 102(b) rejections should be withdrawn.

Claim 1

Claim 1 is an independent claim directed to a method. The method comprises: (a) receiving with an automated banking machine a wireless message representative of a request to establish a wireless connection with a portable wireless device; (b) establishing the wireless connection between the banking machine and the portable wireless device; (c) receiving through the wireless connection a second message from the portable wireless device representative of a request to perform a transaction with the banking machine; (d) authorizing the transaction through communication between the banking machine and a remote host system; (e) sending from the banking machine through the wireless connection to the portable wireless device an authorization confirmation message; (f) receiving through the wireless connection from the portable wireless device a commit transaction message; and (g) completing the authorized transaction through operation of the banking machine.

The Action alleges that Gutman teaches these steps. Appellants disagree. With respect to step (a) of claim 1, the Action states that Gutman teaches a method comprising “receiving with an automated banking machine a wireless message representative of a request to establish a wireless connection with a portable wireless device (100) (fig. 1; col 3, lines 46-68)”. By associating Gutman’s reference numeral (100) with the element of portable wireless device, it

appears that the Action regards Gutman's electronic wallet (100) as corresponding to the portable wireless device recited in claim 1.

Further, with respect to step (b) the Action asserts that Gutman teaches "establishing the wireless connection between the banking-machine/central-financial-computer and the portable wireless device 100 (fig. 1; col. 4, lines 35-54)". By use of the forward slash "/" between "banking-machine" and "central-financial-computer", the Action appears to assert that the central-financial-computer of Gutman corresponds to an automated banking machine as recited in claim 1. However, nowhere in Gutman is it disclosed or suggested that a central financial computer corresponds to an automated banking machine. In addition Gutman teaches away from having an automated banking machine serving as a central financial computer by teaching that an automated banking machine such as an ATM is a dedicated terminal device connected to a central financial computer (Column 1, lines 31-33). Thus, in view of Gutman, an automated banking machine is not a central financial computer but is a separate dedicated terminal device that connects to a central financial computer. It follows that Gutman does not disclose or suggest an automated banking machine receiving a wireless message from a portable wireless device, and Gutman does not disclose or suggest establishing a wireless connection between an automated banking machine and a portable wireless device.

Claim 1 specifically recites steps involving three different components: 1) an automated banking machine, 2) a portable wireless device; 3) and a remote host system. As discussed above, based on the assertions made in the Action, the Office appears to be arguing that the portable wireless device recited in claim 1 corresponds to the electronic wallet of Gutman and the automated banking machine recited in claim 1 corresponds to the central financial computer of

Gutman. However, with respect to the recited element of a remote host system in claim 1, the Action has not stated or even suggested which element of Gutman corresponds to a remote host system. On page 2 of the Action, the element of a remote host system is listed before the various cited portions in Gutman which are Figures 5C-5E; Column 7, line 41 through column 8, line 18; Column 9, lines 10-44; and Column 14, lines 17-67 of Gutman. These cited portions do not specifically mention a "remote host system". Thus Appellants have been forced to speculate as to what the Action asserts is the "remote host system" in Gutman. Appellants have speculated that the Office may regard the third party (524) shown in Figures 5C-5E and discussed at Column 14, lines 17-67 of Gutman, as corresponding to a remote host system. The Appellants reserve all rights to amend their arguments, including the filing of a Supplemental Appeal Brief, if their speculation, required by the unclear Action, is incorrect.

Appellants respectfully submit even if it were possible for an electronic wallet, central financial computer, and third party of Gutman to correspond respectively to the portable wireless device, automated banking machine, and remote host system recited in claim 1 (which it is not), none of the examples in Gutman involving an electronic wallet, central financial computer, and third party disclose or suggest the specific steps recited in claim 1 involving a portable wireless device, an automated banking machine, and a remote host system.

For example, with respect to Figures 5C-5E, Gutman states that his electronic wallet (52) initiates a transaction with a financial institution (522) and a third party (524) by sending a message to the financial institution (522) via the third party (524) (Column 14, lines 17-21). The third party then handshakes the information with the financial institution (522) (Column 14, lines 52-54). The electronic wallet (520) then receives a confirmation message from the financial institution (522) (Column 14, lines 62-64). It is respectfully submitted that this communication

in Gutman between the electronic wallet, financial institution, and third party is the opposite of the communication recited in claim 1.

For example, step (c) of claim 1 recites receiving through the wireless connection between the automated banking machine and the portable wireless device, a second message from the portable wireless device. This message is representative of a request to perform a transaction with the automated banking machine. Step (d) then recites authorizing the transaction through communication between the banking machine and a remote host system.

In contrast, Gutman describes the opposite communication flow (Figures 5C - 5E), where the electronic wallet initiates a transaction via the third party (Column 14, lines 26-27). The Action appears to regard the third party as the "remote host system" rather than an automated banking machine. After initiation by the electronic wallet, the third party then handshakes the information with the financial institution (Column 14, lines 53-54). The Action asserts that the automated banking machine corresponds to the financial institution of Gutman. Based on the interpretation of Gutman alleged in the Action, Gutman's teachings are directly opposite to the method steps recited in claim 1.

Further, even if the Office reverses its argument by alleging that Gutman's third party corresponds to the recited automated banking machine and that Gutman's central financial institution computer corresponds to the remote host system, Appellants respectfully submit that Gutman would still not disclose or suggest the steps recited in claim 1. For example, where does Gutman disclose or suggest that the "third party" corresponds to an automated banking machine? Further, even if it were possible, which it is not, for the third party to correspond to an automated

banking machine, such an interpretation of Gutman would result in Gutman teaching the opposite flow of communication compared to step (e) of claim 1.

Step (e) of Appellants' claim 1 recites sending from the banking machine through the wireless connection to the portable wireless device, an authorization confirmation message. Gutman does not disclose or suggest that the third party send through a wireless connection to the electronic wallet, an authorization confirmation message. Rather Gutman teaches that the financial institution sends a confirmation message to the electronic wallet via the communication system (300) (Column 14, lines 62-64).

In addition, step (f) of Appellants' claim 1 recites receiving through the wireless connection from the portable wireless device, a commit transaction message. It is respectfully submitted that Gutman does not disclose or suggest a method including such a step. As discussed previously, Gutman discloses that the electronic wallet may receive a confirmation message from the financial institution; however, nowhere does Gutman disclose that the electronic wallet sends a commit transaction message through the wireless connection to either the central financial institution computer, a third party or any other device.

The Action asserts that Appellants' step (f) is shown in Figure 6A, item 612 of Gutman. However Gutman discloses that item 612 involves the confirmation message received by the electronic wallet (Column 17, lines 31-37) from the central financial institution computer, not a commit transaction sent by the electronic wallet to an automated banking machine.

The Appellants respectfully submit that Gutman does not teach every feature, relationship, and step arranged in the manner recited in claim 1, as is required to sustain the rejection. Thus, Appellants respectfully submit the 35 U.S.C. § 102(b) rejection of claim 1 is improper and should be withdrawn.

Claim 2

Claim 2 depends from claim 1. Gutman does not disclose or suggest a banking machine that receives an identification value or financial account data from a portable wireless device through a wireless connection. Further, Gutman does not disclose or suggest a banking machine that sends data corresponding to an identification value and a financial account received from such a portable wireless device, to a remote host system. It follows that Gutman does not anticipate claim 2.

Claim 4

Claim 4 depends from claim 2. Gutman does not disclose or suggest that at least one identification value received with a banking machine from a portable wireless device through a wireless connection, corresponds to a digital certificate. It follows that Gutman does not anticipate claim 4.

Claim 5

Claim 5 depends from claim 2. Gutman does not disclose or suggest that at least one identification value received by a banking machine through a wireless connection from a portable wireless device, corresponds to a PIN. It follows that Gutman does not anticipate claim 5.

Claim 8

Claim 8 depends from claim 1. Gutman does not disclose or suggest modifying data representative of monetary value in a data store of a portable wireless device responsive to at

least one message communicated with a banking machine through a wireless connection. It follows that Gutman does not anticipate claim 8.

Claim 9

Claim 9 depends from claim 1. Gutman does not disclose or suggest a wireless connection between an automated banking machine and a portable wireless device which comprises an RF connection. It follows that Gutman does not anticipate claim 9.

Claim 15

Claim 15 depends from claim 1 and further recites computer readable media bearing instructions which are operative to cause a computer in the automated banking machine to cause the machine to carry out the method steps recited in claim 1. As nothing in the applied art discloses or suggests such an article that operates in the manner recited, it is respectfully submitted that Gutman does not anticipate claim 15.

Pending Claims Are Not Anticipated by Waller

In the Action claims 16 and 17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Waller. These rejections are respectfully traversed.

As indicated previously, Waller is not prior art with respect to the present application. Nevertheless, even if it were somehow possible for Waller to constitute prior art, it still would not anticipate the claims. Appellants respectfully disagree with the Action's interpretation of Waller. As shown in more detail herein, Waller does not teach each and every feature, relationship, and step of the claimed invention arranged in the manner recited in the claims, as is

required to sustain the rejections. It follows that Waller cannot anticipate the claims. Thus, it is respectfully submitted that the 35 U.S.C. § 102(e) rejections should be withdrawn.

Claim 16

Claim 16 is an independent claim directed to an apparatus. The apparatus comprises: an automated banking machine including a computer; at least one transaction function device in the banking machine and in operative connection with the computer; and a wireless access hub in operative connection with the computer. The wireless hub enables the machine to communicate with a plurality of portable wireless devices, wherein the computer is operative to enable the plurality of portable wireless devices to initiate a plurality of transactions with the banking machine at about a same time.

Waller does not disclose or suggest each and every element of the claimed invention arranged in the manner recited in the claim, as is required to sustain the objection. For example, Waller does not disclose or suggest a computer of an automated banking machine that is operative to enable a plurality of portable wireless devices to initiate a plurality of transactions with the banking machine at about a same time. Hence, Appellants' claim 16 patentably distinguishes over the Waller reference. Thus, Appellants respectfully submit the 35 U.S.C. § 102(e) rejection of claim 16 is improper and should be withdrawn.

Claim 17

Claim 17 depends from claim 16 and further recites that at least one transaction function device in the banking machine includes a cash dispenser. As nothing in the applied art discloses

or suggests these features in the manner recited, it is respectfully submitted that Waller does not anticipate claim 17.

(iv) 35 U.S.C. § 103

Appellants traverse the rejections. The Appellants respectfully submit that the attempts to combine the teachings of the references are clearly attempts at hindsight reconstruction of Appellants' claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, 22 USPQ2d 1780 (Fed. Cir. 1992). The rejections, which lack the necessary evidence and rationale, are based on knowledge gleaned only from Appellants' disclosure. There is no teaching, suggestion, or motivation cited so as to produce Appellants' invention. Furthermore, without a motivation to combine, which is the current situation, a rejection based on a *prima facie* case of obviousness is improper (MPEP § 2143.01). The Office does not factually support any *prima facie* conclusion of obviousness. It would not have been obvious to one having ordinary skill in the art to have modified the references in the manner alleged to have produced the recited invention. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections are improper and should be withdrawn.

The Pending Claims Are Not Obvious Over Waller alone

In the Action claims 23-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller alone. These rejections are respectfully traversed. The Appellants respectfully disagree with the Office's interpretation and application of the references.

Also, as previously discussed, Waller does not constitute prior art. Appellants "may overcome a 35 U.S.C. § 103 rejection based on a combination of references by showing completion of the invention by applicant prior to the effective date of any of the references" (MPEP § 715.02). As 35 U.S.C. § 103(a) rejections of claims 23-27 involve Waller, these rejections are not valid.

Furthermore, even if it were somehow possible for Waller to constitute prior art, Appellants respectfully submit that the Action still would not factually support any *prima facie* conclusion of obviousness. Waller does not disclose or suggest the features, relationships, and steps that are specifically recited in the claims. Nor is there any teaching, suggestion, or motivation cited for modifying Waller so as to produce the claimed invention. It would not have been obvious to one having ordinary skill in the art to have modified Waller to have produced the claimed invention.

For these reasons it is respectfully submitted that the 35 U.S.C. § 103 rejections of claims 23-27 should be withdrawn.

Claim 23

Claim 23 is an independent claim which is directed to a method. Step (d) of claim 1 recites "receiving with the portable wireless device through the wireless connection a third message from the banking machine representative of a request to have a user move adjacent the machine".

The Action admits that Waller does not specifically teach a message from the banking machine to request the user to move adjacent to the machine. Also, the Action has failed to show either in Waller or in any other evidence of record, where such a message to request a user to

move adjacent to a banking machine is found in the prior art. As the Action has not shown that the applied art teaches each and every feature, relationship, and step of the claimed invention arranged in the manner recited in claim 23, the Action has failed to support a *prima facie* conclusion of obviousness.

Waller teaches that when a user wishes to withdraw cash from the ATM, the user approaches the ATM and executes the transaction program (Paragraphs 63 and 68). Waller also teaches conveying a message to the user's cell phone 126 advising the user that his/her cash is about to be dispensed. The Action asserts that it would be obvious to modify this message to prompt the user to approach/move-adjacent to the banking-machine-ATM. The Action also asserts that such a modification would have been an obvious expedient. However, in addition to not providing evidence of such a message in the applied art, the Action has failed to provide a motivation, teaching, or suggestion to modify Waller to include such a message. As disclosed in Waller, a user will have previously approached the machine before the transaction is executed. As the user (70) will already be standing next to the machine (14a) (Figure 5) when the cash is dispensed, there is no motivation to modify the messages of Waller to request that the user move adjacent the machine.

Thus, Waller does not disclose or suggest each and every feature, relationship, and step of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness. Further, Appellants respectfully submit that it would not have been obvious to one having ordinary skill in the art to have modified Waller as alleged to have produced the recited method of claim 23.

Claim 24

Claim 24 depends from claim 23 and recites that prior to step (d) the method further comprises: (f) accepting input of a Personal Identification Number (PIN) through the portable wireless device; and (g) sending through the wireless connection to the banking machine data corresponding to the PIN and at least one financing account number. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 25

Claim 25 depends from claim 23. Waller does not disclose or suggest at least step (f) which includes outputting at least one message with the portable wireless device responsive to the third message prompting a user of the portable wireless device to approach the banking machine and provide at least one input operative to send the fourth message. Further Waller does not disclose or suggest that such a step (f) is performed between the recited steps (d) and (e). It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 26

Claim 26 depends from claim 23 and recites that the portable wireless device comprises a voice communication device. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 27

Claim 27 depends from claim 23 and recites computer readable media bearing instructions which are operative in a computer to cause the automated banking machine to carry out the method steps recited in claim 27. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

The Pending Claims Are Not Obvious Over Gutman in view of Waller

In the Action claims 3, 6-7, 10-14, 28-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gutman in view of Waller. These rejections are respectfully traversed. The Appellants respectfully disagree with the Office's interpretation and application of the references.

Also, as previously discussed, Waller does not constitute prior art. Therefore, the rejections involving the Waller reference are not valid. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections of claims 3, 6-7, 10-14, and 28-35 are not valid.

Furthermore, even if it were somehow possible for Waller to constitute prior art, Appellants respectfully submit that the Action still would not factually support any *prima facie* conclusion of obviousness. Gutman in view of Waller does not disclose or suggest the features, relationships, and steps that are specifically recited in the claims. Nor is there any teaching, suggestion, or motivation cited for combining features of these references so as to produce the claimed invention. It would not have been obvious to one having ordinary skill in the art to have modified Gutman and Waller to have produced the claimed invention. For these reasons it is

respectfully submitted that the 35 U.S.C. § 103 rejections of 3, 6-7, 10-14, and 28-35 should be withdrawn.

Claim 3

Claim 3 depends from claim 2 and recites that at least one identification value corresponds to at least one biometric input. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 6

Claim 6 depends from claim 1 and recites that step (g) includes dispensing cash from the banking machine. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 7

Claim 7 depends from claim 1 and recites that the portable wireless device comprises a voice communication device. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 10

Claim 10 depends from claim 6. Neither Gutman nor Waller discloses or suggests that prior to step (g), the method further comprises prompting a user of the portable wireless device to move adjacent to the banking machine. In addition as discussed previously with respect to claim 23, Waller discloses that a user will have previously approached the machine before a transaction is executed (Paragraphs 63 and 68). As a result the user (70) will already be standing next to the machine (14a) (Figure 5) when cash is dispensed. Thus, there is no motivation to modify the messages of Waller as asserted in the Action to request that the user move adjacent the machine.

Neither Gutman nor Waller discloses or suggests each and every feature, relationship, and step of the claimed invention arranged in the manner recited in the claim, as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 11

Claim 11 depends from claim 10 and recites that the prompting step comprises sending at least one prompting message between the banking machine and the portable wireless device through the wireless connection. As discussed previously with respect to claim 23, the Action admits that Waller does not teach a message from the banking machine to request a user to move adjacent to the machine. Neither Gutman nor Waller discloses or suggests prompting a user of the portable wireless device to move adjacent to the banking machine, where a prompting message is sent between the banking machine and the portable wireless device through the wireless connection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 12

Claim 12 depends from claim 10 and recites that subsequent to the prompting step and prior to step (g), providing at least one operation input to the banking machine, wherein cash is dispensed responsive to the operation input. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 13

Claim 13 depends from claim 12 and recites that in step (f) the commit transaction message comprises the operation input. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 14

Claim 14 depends from claim 10. Neither Gutman nor Waller discloses or suggests the step of receiving with the banking machine a further wireless message from a further portable wireless device prior to dispensing cash in step (g). Further neither Gutman nor Waller disclose or suggest that the prompting step includes prompting the user of the portable wireless device and the further portable wireless device to sequentially move adjacent to the banking machine. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 28

Claim 28 is an independent claim which is directed to a method. The Action admits that the financial institution of Gutman does not correspond to an ATM machine, and that Gutman does not teach step (f) of dispensing cash from the ATM. However, the Action asserts that Waller teaches a wireless ATM comprising a cash dispenser for dispensing cash from the ATM. The Action also asserts that it would have been obvious to combine Gutman and Waller due to the fact that a user can also complete his/her transaction at the ATM machine without physically walking into a bank facility. Appellants disagree.

As discussed previously, Waller is not prior art. However, even if Waller were prior art, there is no motivation, teaching, or suggestion in Waller or Gutman to combine Waller and Gutman as suggested. Each of steps (a) through (d) recites an ATM. As admitted in the Action Gutman's does not disclose or suggest that Gutman's financial institution be replaced by an ATM. Thus in addition to not showing step (f) as admitted in the Action, it follows that Gutman also does not disclose steps (a) through (d) which recite an ATM and not a financial institution.

The Action argues that it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ a wireless ATM machine with cash dispensing functionality as taught by Waller, to the teachings of Gutman in addition to Gutman's transaction system. It is unclear from the Action how a wireless ATM can be employed in the transaction system of Gutman. Thus Appellants have been forced to speculate that to support the rejection of claim 28 on the basis of obviousness, that the Action is suggesting that it would be obvious to substitute Waller's cash dispensing ATM for Gutman's financial institution.

It is respectfully submitted that neither Gutman nor Waller provide a motivation, teaching, or suggestion to make such a substitution. Nowhere in Gutman is it disclosed or

suggested that a financial institution or a central financial computer of a financial institution corresponds to an automated banking machine. Gutman discloses an electronic wallet which wirelessly communicates with a central financial computer of a financial institution. Gutman does not disclose or suggest that its electronic wallet communicate with an automated banking machine such as an ATM. On this contrary, as previously discussed, Gutman expressly teaches that an ATM is not suitable for use with his electronic wallet. Thus neither Gutman nor Waller provides a motivation to substitute Waller's cash dispensing ATM for Gutman financial institution. As a result, the rejection of claim 28 is improper.

In addition, step (c) of claim 28 recites "authorizing the transaction through communication between the ATM and a remote host system." As recited in step (b) the transaction includes dispensing cash from the ATM. Step (d) of claim 28 recites that: "responsive to step (c) sending from the ATM through the wireless connection to the portable wireless device at least one second message that is operative to cause the portable wireless device to prompt a user of the portable wireless device to provide at least one input". Thus claim 28, specifically recites that step (d) is performed responsive to step (c).

The Action asserts that step (d) is shown in Gutman in Figure 6A-6D; Column 7, lines 64-68; and Column 16, line 39 through Column 17, line 38. Applicants disagree. Gutman discloses that a number of transactions may be initiated by the electronic wallet (100) and a subsequent confirmation message may be received by the electronic wallet (Column 17, lines 29-33). However, Gutman does not disclose or suggest that an ATM (or even the financial institution) performs a step (d) which includes sending a message through a wireless connection to a portable wireless device which causes the portable wireless device to prompt a user to

provide at least one input, responsive to a step (c) of authorizing a transaction with communication with a remote host system.

In addition, Gutman also does not disclose or suggest step (e) of claim 28 where an ATM receives a message generated in response to the at least one input which was prompted to be provided by the user in step (d). The Action appears to suggest that such an input in Gutman corresponds to “a password, type of transaction and/or details of the transaction etc.” However, nowhere does Gutman suggest that an input such as a password, type of transaction and/or details of the transaction is prompted for by a message sent to a portable electronic device in response to a step of authorizing a transaction through communication between an ATM and a remote host system.

Thus, the Action has failed to show that Gutman in view of Waller discloses or suggest each and every feature, relationship, and step of the claimed invention, as is required to sustain the rejection. The Office has not established a *prima facie* showing of obviousness.

Additionally, Appellants have shown that it would not have been obvious to modify Gutman with the teaching of Waller in the manner alleged. Furthermore, even if it were somehow possible for Gutman to be modified with the teaching of Waller as alleged, the result still would not have produced the recited invention of claim 28. In addition, Waller is not prior art. Thus, Appellants respectfully submit the rejection is improper and should be withdrawn.

Claim 29

Claim 29 depends from claim 28 and recites that prior to (e) the method comprises receiving the at least one input from the user with an input device of the portable wireless device. Claim 29 also recites that in (e) the at least one third message is received with the ATM through

the wireless connection from the portable wireless device. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 30

Claim 30 depends from claim 28. Neither Gutman nor Waller discloses or suggests prior to (e) receiving the at least one input from the user with an input device of the ATM. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 31

Claim 31 depends from claim 28. Neither Gutman nor Waller discloses or suggests as recited in (d) that the at least one second message is operative to cause the portable wireless device to prompt the user of the portable wireless device to move adjacent to the ATM. As discussed previously with respect to claim 23, Waller discloses that a user will have previously approached the machine before a transaction is executed (Paragraphs 63 and 68). As a result the user (70) will already be standing next to the machine (14a) (Figure 5) when cash is dispensed. Thus, there is no motivation to modify the messages of Waller as asserted in the Action to request that the user move adjacent the machine.

Neither Gutman nor Waller discloses or suggests each and every feature, relationship, and step of the claimed invention as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 32

Claim 32 depends from claim 28 and recites that in (d) the at least one second message is operative to cause the portable wireless device to indicate to the user that the input causes the ATM to dispense cash. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 33

Claim 33 depends from claim 28 and recites computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 28. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 34

Claim 34 is an independent claim which is directed to a method. In the section of the Response directed to the rejection of claim 34, the Action has provided no discussion of where the steps recited in claim 34 are allegedly found in either Gutman or Waller. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Neither Gutman nor Waller disclose or suggest step (a) of providing wireless connection between an ATM and at least two portable wireless devices such that the at least two portable wireless devices concurrently carry out cash dispensing transactions with the ATM through wireless connection with the ATM. In addition neither Gutman nor Waller disclose or suggest

performing the prompting steps (b) and (e) with the at least two portable wireless devices, where step (e) is performed subsequent to step (d) which includes dispensing cash to the first user of the first one of the at least two portable wireless.

Thus, Gutman in view of Waller does not disclose or suggest each and every feature, relationship, and step of the claimed invention, as is required to sustain the rejection. It follows that the rejection does not factually support any *prima facie* conclusion of obviousness. Further, Appellants respectfully submit that it would not have been obvious to one having ordinary skill in the art to have modified Gutman with the teachings of Waller as alleged to have produced the recited method of claim 34. In addition, Waller does not constitute prior art.

Claim 35

Claim 35 depends from claim 34 and recites computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 34. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

The Pending Claims Are Not Obvious Over Waller in view of Gutman

In the Action claims 18-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman. These rejections are respectfully traversed. The Appellants respectfully disagree with the Office's interpretation and application of the references.

Also, as discussed previously, for purposes of advancing prosecution of the case, Appellants have presumed that claim 22 was intended by the Office to be rejected under 35

U.S.C. § 103(a) as being unpatentable over Waller in view of Gutman as well. This presumed rejection is also respectfully traversed.

Also, as previously discussed, Waller does not constitute prior art. Therefore, the rejections involving the Waller reference are not valid. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections of claims 18-22 are not valid.

Furthermore, even if it were somehow possible for Waller to constitute prior art, Appellants respectfully submit that the Action still would not factually support any *prima facie* conclusion of obviousness. Waller in view of Gutman does not disclose or suggest the features, relationships, and steps that are specifically recited in the claims. Nor is there any teaching, suggestion, or motivation cited for combining features of these references so as to produce the claimed invention. It would not have been obvious to one having ordinary skill in the art to have modified Waller and Gutman to have produced the claimed invention. For these reasons it is respectfully submitted that the 35 U.S.C. § 103 rejections of 18-22 should be withdrawn.

Claim 18

Claim 18 depends from claim 16. The Action admits that Waller does not teach that when at least two of the portable wireless devices initiate transactions that require the operation of one transaction function device, the computer is operative to cause outputs to be generated from at least one output device to sequentially prompt users of the at least two portable wireless devices initiating the transactions. It follows from this admission in the Action that Waller also does not disclose or suggest sequentially prompting users of the at least two portable wireless devices initiating the transactions to move adjacent the one transaction function device.

The Action asserts that Gutman discloses these features which are absent from Waller. Appellants disagree. However, nowhere does Gutman disclose or suggest sequentially prompting users of at least two portable wireless devices initiating the transactions to move adjacent one transaction function device. It is respectfully submitted that the Office has not established a *prima facie* showing of obviousness.

Claim 19

Claim 19 depends from claim 16. Neither Waller nor Gutman disclose or suggest, that when at least two of the plurality of transactions require the operation of one transaction function device, the computer is operative to cause a first wireless message to be sent to a first portable wireless device initiating one of the at least two transactions. Further neither Waller nor Gutman disclose or suggest that the first message is operative to cause the first portable wireless device to output a prompt message to instruct a user to move adjacent the one transaction function device. It is respectfully submitted that the Office has not established a *prima facie* showing of obviousness.

Claim 20

Claim 20 depends from claim 19 and recites that the computer is operative to cause the one transaction function device to operate responsive to receipt by the banking machine of a second wireless message from the first portable wireless device. The second message is representative of an input to the first portable wireless device indicative of a request to operate the one transaction function device. As nothing in the applied art discloses or suggests these

features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

Claim 21

Claim 21 depends from claim 19 and recites that the banking machine further comprises an identifying device in operative connection with the computer. The identifying device is operative to receive at least one input indicative of an identity of a user. The computer is operative to cause operation of the one transaction function device responsive to the at least one input corresponding to one of the at least two transactions. As nothing in the applied art discloses or suggests these features in the manner recited, it is respectfully submitted that claim 21 is allowable on this basis.

Claim 22

Claim 22 depends from claim 21 and recites that the identifying device includes a biometric reader. As nothing in the applied art discloses or suggests these features in the manner recited, it follows that the rejection does not factually support any *prima facie* conclusion of obviousness.

CONCLUSION

Each of Appellants' pending claims specifically recites features and relationships that are neither disclosed nor suggested in any of the applied prior art. Furthermore, the applied prior art is devoid of any teaching, suggestion, or motivation for combining features of the applied art so as to produce the recited invention. Further, all rejections based on Waller are improper because Waller does not constitute prior art. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,



Ralph E. Joeke Reg. No. 31,029
231 South Broadway
Medina, Ohio 44256
(330) 722-5143

APPENDIX OF CLAIMS

Pending Claims in Application Serial No. 09/966,932

1. A method comprising:
 - (a) receiving with an automated banking machine a wireless message representative of a request to establish a wireless connection with a portable wireless device;
 - (b) establishing the wireless connection between the banking machine and the portable wireless device;
 - (c) receiving through the wireless connection a second message from the portable wireless device representative of a request to perform a transaction with the banking machine;
 - (d) authorizing the transaction through communication between the banking machine and a remote host system;
 - (e) sending from the banking machine through the wireless connection to the portable wireless device an authorization confirmation message;

- (f) receiving through the wireless connection from the portable wireless device a commit transaction message; and
- (g) completing the authorized transaction through operation of the banking machine.

2. The method according to claim 1, and prior to step (d) further comprising:

receiving with the banking machine from the portable wireless device through the wireless connection at least one identification value and data corresponding to at least one financial account; and

wherein step (d) includes sending data corresponding to the at least one identification value and the at least one financial account to the remote host system.

3. The method according to claim 2 wherein the at least one identification value corresponds to at least one biometric input.

4. The method according to claim 2 wherein the at least one identification value corresponds to a digital certificate.

5. The method according to claim 2 wherein the at least one identification value corresponds to a PIN.
6. The method according to claim 1 wherein step (g) includes dispensing cash from the banking machine.
7. The method according to claim 1 wherein the portable wireless device comprises a voice communication device.
8. The method according to claim 1 wherein the portable wireless device comprises at least one data store including data representative of monetary value, and further comprising modifying the data representative of monetary value responsive to at least one message communicated with the banking machine through the wireless connection.
9. The method according to claim 1 wherein the wireless connection comprises an RF connection.
10. The method according to claim 6 and further comprising prior to step (g):

prompting a user of the portable wireless device to move adjacent to the banking machine.

11. The method according to claim 10 wherein the prompting step comprises sending at least one prompting message between the banking machine and the portable wireless device through the wireless connection.

12. The method according to claim 10 and subsequent to the prompting step and prior to step (g), providing at least one operation input to the banking machine, wherein cash is dispensed responsive to the operation input.

13. The method according to claim 12 wherein in step (f) the commit transaction message comprises the operation input.

14. The method according to claim 10 and further comprising:

receiving with the banking machine a further wireless message from a further portable wireless device prior to dispensing cash in step (g);

and wherein the prompting step includes prompting the user of the portable wireless device and the further portable wireless device to sequentially move adjacent to the banking machine.

15. Computer readable media bearing instructions which are operative to cause a computer in the automated banking machine to cause the machine to carry out the method steps recited in claim 1.

16. Apparatus comprising:

an automated banking machine including a computer;

at least one transaction function device in the banking machine and in operative connection with the computer; and

a wireless access hub in operative connection with the computer, where the wireless hub enables the machine to communicate with a plurality of portable wireless devices, wherein the computer is operative to enable the plurality of portable wireless devices to initiate a plurality of transactions with the banking machine at about a same time.

17. The apparatus according to claim 16, wherein at least one transaction function device in the banking machine includes a cash dispenser.

18. The apparatus according to claim 16, wherein when at least two of the portable wireless devices initiate transactions that require the operation of one transaction function device, the computer is operative to cause outputs to be generated from at least one output device to sequentially prompt users of the at least two portable wireless devices initiating the transactions to move adjacent the one transaction function device.

19. The apparatus according to claim 16, wherein when at least two of the plurality of transactions requires the operation of one transaction function device, the computer is operative to cause a first wireless message to be sent to a first portable wireless device initiating one of the at least two transactions, wherein the first message is operative to cause the first portable wireless device to output a prompt message to instruct a user to move adjacent the one transaction function device.

20. The apparatus according to claim 19, wherein the computer is operative to cause the one transaction function device to operate responsive to receipt by the banking machine of a second wireless message from the first portable wireless device, wherein the second message is representative of an input to the first portable wireless device indicative of a request to operate the one transaction function device.

21. The apparatus according to claim 19, wherein the banking machine further comprises an identifying device in operative connection with the computer, wherein the identifying device is operative to receive at least one input indicative of an identity of a user, wherein the computer is operative to cause operation of the one transaction function device responsive to the at least one input corresponding to one of the at least two transactions.

22. The automated banking machine according to claim 21, wherein the identifying device includes a biometric reader.

23. A method comprising:

- (a) sending with a portable wireless device a first message representative of a request to establish a wireless connection with an automated banking machine;
- (b) establishing the wireless connection between the portable wireless device and the banking machine;
- (c) sending through the wireless connection a second message from the portable wireless device to the banking machine representative of a request to perform a transaction with the banking machine;
- (d) receiving with the portable wireless device through the wireless connection a third message from the banking machine representative of a request to have a user move adjacent the machine; and
- (e) sending from the portable wireless device through the wireless connection a fourth message to the banking machine representative of a request for the machine to operate a transaction function device.

24. The method according to claim 23, and prior to step (d) further comprising:

- (f) accepting input of a Personal Identification Number (PIN) through the portable wireless device;

- (g) sending through the wireless connection to the banking machine data corresponding to the PIN and at least one financing account number.

25. The method according to claim 23, wherein between steps (d) and (e), further comprising:

- (f) outputting at least one message with the portable wireless device responsive to the third message prompting a user of the portable wireless device to approach the banking machine and provide at least one input operative to send the fourth message.

26. The method according to claim 23 wherein the portable wireless device comprises a voice communication device.

27. Computer readable media bearing instructions which are operative in a computer to cause the automated banking machine to carry out the method steps recited in claim 23.

28. A method comprising:

- (a) establishing a wireless connection between an ATM and a portable wireless device;

- (b) receiving with the ATM through the wireless connection at least one first message from the portable wireless device representative of a transaction that includes dispensing cash from the ATM;
- (c) authorizing the transaction through communication between the ATM and a remote host system;
- (d) responsive to step (c) sending from the ATM through the wireless connection to the portable wireless device at least one second message that is operative to cause the portable wireless device to prompt a user of the portable wireless device to provide at least one input;
- (e) receiving with the ATM at least one third message generated in response to the at least one input provided by the user; and
- (f) dispensing cash from the ATM responsive to the at least one third message.

29. The method according to claim 28, and prior to (e) receiving the at least one input from the user with an input device of the portable wireless device, wherein in (e) the at least one third message is received with the ATM through the wireless connection from the portable wireless device.

30. The method according to claim 28, and prior to (e) receiving the at least one input from the user with an input device of the ATM.

31. The method according to claim 28, wherein in (d) the at least one second message is operative to cause the portable wireless device to prompt the user of the portable wireless device to move adjacent to the ATM.

32. The method according to claim 28, wherein in (d) the at least one second message is operative to cause the portable wireless device to indicate to the user that the input causes the ATM to dispense cash.

33. Computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 28.

34. A method comprising:

- a) providing wireless connection between an ATM and at least two portable wireless devices wherein the at least two portable wireless devices concurrently carry out cash dispensing transactions with the ATM through wireless connection with the ATM;
- b) prompting a first user of a first one of the at least two portable wireless devices to provide at least one first input responsive to communication

between the first one of the at least two portable wireless devices and the ATM through wireless connection;

- c) receiving at least one input corresponding to the at least one first input with the ATM; and
- d) dispensing cash to the first user through operation of a cash dispenser of the ATM responsive to receipt of the at least one input in (c); and subsequent to (d);
- e) prompting a second user of a second one of the at least two portable wireless devices, to provide at least one second input responsive to communication between the second one of the at least two portable wireless devices and the ATM through wireless connection;
- f) receiving at least one input corresponding to the at least one second input with the ATM; and
- g) dispensing cash to the second user through operation of the cash dispenser of the ATM responsive to receipt of the at least one input in (f).

35. Computer readable media bearing instructions which are operative in at least one computer of the ATM to cause the ATM to carry out the method steps recited in claim 34.